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**Spectrum Healthcare Services, Inc. d/b/a Correctional Medical Services and American Federation of State, County and Municipal Employees (AFSCME), Council 31, AFL-CIO. Case 33-CA-12535**

March 26, 1998

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND  
BRAME

Pursuant to a charge filed on January 22, 1998, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on February 9, 1998, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 33-RC-4199. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On February 25, 1998, the General Counsel filed a Motion for Summary Judgment. On February 27, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response and Cross Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of the Board's jurisdictional determination in the representation proceeding. The Respondent alleges as affirmative defenses that the Board improperly asserted jurisdiction over the health care unit, because the individuals responsible for administering, supervising, managing, and directing the unit and its employees are "public officials employed by the Illinois Department of Corrections, and serve at the pleasure of public officials."

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any

special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding.<sup>1</sup> See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.<sup>2</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a Missouri corporation, with an office and a place of business located, inter alia, in Sheridan, Illinois, has been engaged in the business of providing medical and health care services to inmates at correctional facilities.

During the past calendar year (1997), the Respondent, in conducting its business operations, derived gross revenues in excess of \$250,000 and during the same period of time, the Respondent purchased and received at its Sheridan, Illinois facility goods valued in excess of \$50,000 directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held November 5, 1997, the Union was certified on November 13, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees employed by the Employer at the Sheridan Correctional Center in Sheridan, Illinois including all registered nurses, clinical psychologists, licensed practical nurses, x-ray technicians, dental assistants, and staff assistants; but excluding pharmacists, confidential employees, office clerical employees, guards and supervisors as defined in the Act.

<sup>1</sup> The Respondent's Cross Motion for Summary Judgment is denied as the record evidence establishes the General Counsel's allegations, and thus, summary judgment is appropriate.

<sup>2</sup> Member Brame did not participate in the underlying representation case. He joins his colleagues in granting summary judgment on the terms that the Respondent has not raised anything that is properly litigable before the Board in this test-of-certification case.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. Refusal to Bargain

At all times since December 15, 1997, the Union has requested, and is requesting, the Respondent to meet and bargain and, since on or about December 19, 1997, the Respondent has failed and refused. We find that this failure and refusal constitutes an unlawful refusal to meet and bargain in violation of Section 8(a)(5) and (1) of the Act.

### CONCLUSION OF LAW

By failing and refusing on and after December 19, 1997, to meet and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to meet and bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

### ORDER

The National Labor Relations Board orders that the Respondent, Spectrum Healthcare Services, Inc., d/b/a Correctional Medical Services, Sheridan, Illinois, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Failing and refusing to meet and bargain with American Federation of State, County and Municipal Employees (AFSCME), Council 31, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

#### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive representative of the employees in the

following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees employed by the Employer at the Sheridan Correctional Center in Sheridan, Illinois including all registered nurses, clinical psychologists, licensed practical nurses, x-ray technicians, dental assistants, and staff assistants; but excluding pharmacists, confidential employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Sheridan, Illinois, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 22, 1998.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 26, 1998

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William B. Gould IV, Chairman

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Sarah M. Fox, Member

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J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with American Federation of State, County and Municipal Employees (AFSCME), Council 31, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time employees employed by us at our Sheridan Correctional Center in Sheridan, Illinois including all registered nurses, clinical psychologists, licensed practical nurses, x-ray technicians, dental assistants, and staff assistants; but excluding pharmacists, confidential employees, office clerical employees, guards and supervisors as defined in the Act.

SPECTRUM HEALTHCARE SERVICES, INC.  
D/B/A CORRECTIONAL MEDICAL SERVICES